No. 23-50

In the Supreme Court of the United States

JASCHA CHIAVERINI, ET AL., PETITIONERS

v.

CITY OF NAPOLEON, OHIO, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING VACATUR

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QUESTION PRESENTED

Whether a police officer who initiates a baseless criminal charge that causes an unreasonable seizure is liable on a Fourth Amendment malicious-prosecution claim under 42 U.S.C. 1983 if the baseless charge was accompanied by a separate, valid charge for which the officer had probable cause.

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INTEREST OF THE UNITED STATES

The question presented concerns the elements of a Fourth Amendment malicious-prosecution claim under 42 U.S.C. 1983. The United States has a substantial interest in the resolution of that question.

First, the United States has a substantial interest in ensuring that the constitutional rights at issue here are carefully safeguarded. The United States prosecutes individuals—mostly state and local law-enforcement officers—who willfully violate federal rights under color of law. See 18 U.S.C. 241, 242. The United States also brings civil suits against state and local law-enforcement agencies under 34 U.S.C. 12601, which authorizes the Attorney General to seek appropriate relief to remedy a pattern or practice of law-enforcement officers' violations of constitutional rights.

Second, although this case involves a civil suit against local law-enforcement officers under Section 1983, this Court's resolution of the question presented could conceivably affect Fourth Amendment suits against federal officers under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The United States has a substantial interest in the circumstances in which federal officers can be sued for violating the Fourth Amendment.

Third, the United States brings criminal charges and detains suspects pending trial on those charges. The United States has a substantial interest in the scope of constitutional rights relating to criminal prosecution and pretrial detention.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix. App., *infra*, 1a.

STATEMENT

1. Petitioner Jascha Chiaverini manages a jewelry store owned by petitioner Chiaverini, Inc., in Napoleon, Ohio. See Pet. App. 2a & n.1. In 2016, Chiaverini bought a ring and an earring from a jewel thief. See *id.* at 2a. The thief had stolen the jewelry from David and Christina Hill, but the parties dispute whether Chiaverini knew of the theft at the time of the purchase. See *ibid.*

Later that day, the Hills called the store and asked Chiaverini to return the jewelry. See Pet. App. 2a. He refused, and the Hills and Chiaverini both called the police. See *ibid.* David Hill then went to the store to demand the return of the jewelry, but to no avail. See *id.* at 3a. Meanwhile, the Napoleon Police Department dispatched Officers Nicholas Evanoff and David Steward to the store. See *ibid.* Officer Evanoff confirmed to

Chiaverini that the jewelry had been stolen and instructed him not to sell it. See *ibid.*

The next day, the police department sent the store a letter asking it to retain the jewelry as evidence of theft and to return the jewelry to the Hills. See Pet. App. 4a. Chiaverini believed that the request to return the jewelry contradicted the request to retain it. See *ibid.* Christina Hill went to the store later that day to pick up the jewelry, but Chiaverini refused to turn it over. See *ibid.* The police then returned to the store and directed him to surrender the jewelry, but he again refused. See *ibid.*

Two days later, Chiaverini confronted the police chief outside the police station. See Pet. App. 4a. In that conversation, he stated that he would not return the jewelry to the Hills. See *id.* at 4a-5a. He also implied that he lacked a valid license to deal in precious metals. See *id.* at 5a. The police later confirmed that his license was inactive. See *ibid.*

2. After meeting with a prosecutor, Officer Evanoff signed criminal complaints charging Chiaverini with three offenses: (1) retaining stolen property, in violation of Ohio Rev. Code § 2913.51(A) (2016) (a misdemeanor); (2) dealing in precious metals without a license, in violation of Ohio Rev. Code § 4728.02(A) (2016) (a misdemeanor); and (3) money laundering, in violation of Ohio Rev. Code § 1315.55(A)(1) (2016) (a felony). See Pet. App. 6a. Officer Evanoff also applied for an arrest warrant and a search warrant, and he submitted affidavits in support of those applications. See *id.* at 6a, 34a.

The case comes to this Court on the premise that the police had probable cause for the stolen-property and unlicensed-dealing charges, but not necessarily for the money-laundering charge. See Pet. App. 10a & n.8. The

Ohio money-laundering statute provides: "No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity." Ohio Rev. Code § 1315.55(A)(1) (2016).

According to petitioners (Br. 7), the money-laundering statute would have applied only if Chiaverini knew, at the time he purchased the ring and earring, that the transaction involved the proceeds of illegal activity. To provide evidence of Chiaverini's mental state, Officers Evanoff and Steward alleged that, when they visited the store, he confessed suspecting that the jewelry "was in fact stolen." Pet. App. 3a. But Chiaverini denies making that statement. See *id.* at 4a. He claims that the police fabricated the statement—specifically, that Officer Steward doctored a police report to include the statement, and that Officer Evanoff then repeated the falsified statement in his affidavit. See *id.* at 3a-4a, 6a.

Petitioners also argue that the money-laundering statute would have applied only if the value of the ring and earring exceeded $1000. See Br. 7-8 (citing Ohio Rev. Code § 2923.31(I)(2)(c) (2016)). They claim (Br. 8) that Chiaverini had bought the jewelry for only $45 and that Officer Evanoff listed the jewelry's value at only $350 in the criminal complaint.

3. A judge of the Napoleon Municipal Court issued the arrest and search warrants sought by the police. Pet. App. 6a. The arrest warrant listed all three charges against Chiaverini. See D. Ct. Doc. 27-8 (Nov. 29, 2018). The search warrant authorized the police to search the store and to seize jewelry and other evidence of the crimes. See J.A. 18-19. In accordance with the warrants, the police arrested Chiaverini, searched the

store, and seized jewelry, documents, and computers. See Pet. App. 25a. Chiaverini remained in custody for three days before being released. See J.A. 75.

After his release, the municipal court held a preliminary hearing to determine which charges to bind over for trial. See Pet. App. 6a-7a. Chiaverini and Officer Evanoff provided conflicting testimony about whether Chiaverini had admitted suspecting that the jewelry had been stolen. See *ibid.* The court found probable cause to support all three charges. See *id.* at 7a.

The prosecution did not timely present the case to a grand jury. See Pet. App. 7a. The municipal court accordingly dismissed without prejudice all the charges against Chiaverini, and the police returned the items that they had seized from him. See *ibid.*

4. Petitioners sued respondents—the City of Napoleon, Officer Evanoff, Officer Steward, and two other police officers—in the Henry County Court of Common Pleas. See Pet. App. 18a. Respondents removed the case to the United States District Court for the Northern District of Ohio. See *ibid.*

Petitioners' suit raises multiple federal and state claims, including a Fourth Amendment claim under 42 U.S.C. 1983 alleging "damages in excess of $3 million." J.A. 60-61. Petitioners allege that respondents initiated criminal charges without probable cause and that, as a result, Chiaverini suffered unlawful arrest and detention. See J.A. 61. The parties refer to that count as a "Fourth Amendment malicious-prosecution claim." Pet. Br. 2; see Br. in Opp. i.

The district court granted summary judgment in favor of respondents on most counts of the complaint. See Pet. App. 18a-48a. In rejecting petitioners' Fourth Amendment claim, the court found that probable cause

supported all three criminal charges against Chiaverini. See *id.* at 32a-41a.

5. The court of appeals affirmed. See Pet. App. 1a-17a. The court first held that respondents had probable cause to believe that Chiaverini had retained stolen property, see *id.* at 11a-13a, and that he had acted as a precious-metals dealer without a license, see *id.* at 13a-16a. But the court did not decide whether respondents had probable cause to support the charge of money laundering. See *id.* at 10a n.8. The court instead stated: "Because probable cause existed to arrest and prosecute Chiaverini on at least one charge, his malicious-prosecution and false-arrest claims fail." *Id.* at 16a.

SUMMARY OF ARGUMENT

A person who faced a baseless criminal charge may bring a Fourth Amendment malicious-prosecution claim under 42 U.S.C. 1983 even if he also faced a valid charge. But the person must show that the baseless charge caused an unreasonable seizure.

A. Section 1983 imposes civil liability upon a state actor only if he subjects a person, or causes a person to be subjected, to the denial of a federal right. Filing a baseless criminal charge does not, by itself, "subject" a person to a denial of Fourth Amendment rights. The Fourth Amendment forbids unreasonable searches and seizures, not unreasonable charges. Filing a baseless criminal charge can, however, "cause" a denial of Fourth Amendment rights, most obviously by causing an unlawful arrest or unlawful pretrial detention. A claim that a police officer has caused an unreasonable seizure of the plaintiff by initiating a baseless criminal charge is sometimes known as a Fourth Amendment malicious-prosecution claim.

Contrary to the categorical rule applied by the court of appeals, the presence of a single valid charge does not automatically defeat a Fourth Amendment malicious-prosecution claim. A baseless charge can cause an unreasonable seizure even if it is accompanied by a valid charge. For example, the inclusion of the baseless charge can unreasonably prolong a suspect's pretrial detention. When a baseless charge has such an effect, or causes an unreasonable seizure in some other way, Section 1983 allows the wronged party to seek redress.

In defining the elements of a Section 1983 damages claim, this Court has also considered the elements of the most analogous tort in 1871—here, the tort of malicious prosecution. In the 19th century, American courts and commentators agreed that a person who initiated a baseless charge could be sued for malicious prosecution even if he also initiated a valid charge at the same time. Put another way, courts proceeded charge by charge in evaluating the probable-cause element of the malicious-prosecution tort. This Court should follow a similar charge-specific approach in evaluating Fourth Amendment malicious-prosecution claims.

Even under such a charge-specific approach, police officers would retain significant protection from unfounded Section 1983 suits. A plaintiff would still need to show that an officer lacked probable cause to initiate the charge at issue. And the officer could invoke qualified immunity.

In this case, the court of appeals rejected petitioners' Fourth Amendment malicious-prosecution claim after determining that probable cause supported two of the three charges against Chiaverini. The court did not ask (as it should have) whether the remaining, allegedly baseless charge caused an unreasonable seizure. This

Court should accordingly vacate the court of appeals' judgment and remand the case for further proceedings.

B. This Court should not adopt some of petitioners' broader arguments. Petitioners invoke not only the Fourth Amendment's guarantee against unreasonable seizures of the person, but also its guarantee against unreasonable seizures of effects and its restrictions on warrants. The question presented, however, concerns only the elements of a "Fourth Amendment malicious-prosecution claim." And under this Court's precedents, such a claim concerns only unreasonable seizures of persons. Although Section 1983 allows a plaintiff to seek relief for violations of other Fourth Amendment rights, amalgamating different Fourth Amendment rights into a single constitutional tort would likely cause significant confusion about the tort's elements.

Petitioners in any event misinterpret the Warrant Clause. Contrary to their contention, an arrest warrant does not automatically violate the Warrant Clause whenever the warrant affidavit includes a falsified charge. Rather, when a warrant affidavit includes a deliberate or reckless falsehood, a court should excise the falsehood and ask whether the remaining content in the affidavit supports the warrant. In this case, even after a court excises the alleged falsehoods relating to the money-laundering charge, the warrant affidavit would contain sufficient content to support the probable-cause findings on the other two charges—and, thus, sufficient content to support the arrest warrant.

Finally, petitioners briefly suggest that a causal link between a baseless charge and an unreasonable seizure is relevant only to compensatory damages and is not an element of the plaintiff's claim. That argument conflicts with Section 1983's text, which expressly requires the

plaintiff to prove that the defendant caused a denial of a federal right—here, an unreasonable seizure.

ARGUMENT

In 42 U.S.C. 1983, Congress imposed civil liability upon a state actor who subjects a person, or causes a person to be subjected, to the deprivation of a federal right. If a police officer institutes a baseless criminal charge, and the charge causes an unreasonable seizure, Section 1983 allows the injured party to bring a "Fourth Amendment claim * * * for malicious prosecution." *Thompson* v. *Clark*, 596 U.S. 36, 43 (2022); see *Manuel* v. *City of Joliet*, 580 U.S. 357, 364-369 (2017).

To prevail on such a Fourth Amendment claim, a plaintiff must prove that the police officer initiated a criminal charge without probable cause, see *Thompson*, 596 U.S. at 43; the plaintiff obtained a favorable termination of that criminal charge, see *id.* at 44; and the criminal charge caused an unreasonable seizure of the plaintiff, see *id.* at 42, 43 n.2; *Manuel*, 580 U.S. at 364-369. This Court has reserved judgment on what mental-state element, if any, the plaintiff must prove. See *Thompson*, 596 U.S. at 44 n.3. The United States has argued that the plaintiff must prove that the police officer acted with the intent to deceive or with reckless disregard for the absence of probable cause. See U.S. Amicus Br. at 25-26, *Manuel*, *supra* (No. 14-9496).

This case concerns the application of those elements to a case in which a police officer initiates multiple charges, some of which are supported by probable cause but others of which are not. In the decision below, the court of appeals applied a categorical rule, under which the police officer wins if he has probable cause to support *any* one charge. See Pet. App. 10a, 16a. Other courts have applied an equally categorical but opposite

rule, under which the officer loses unless probable cause supported *every* charge. See, *e.g.*, *Posr* v. *Doherty*, 944 F.2d 91, 100 (2d Cir. 1991).

The correct answer lies between the extremes of an "any crime" rule and an "every crime" rule. A person who faced a baseless criminal charge may bring a Fourth Amendment malicious-prosecution claim, even if the baseless charge was accompanied by a valid one, but only if the baseless charge caused an unreasonable seizure. Because the court of appeals applied a different rule, this Court should vacate its judgment and remand the case for further proceedings. In doing so, however, the Court should refrain from adopting some of petitioners' broader contentions.[1]

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[1] This case concerns only a civil suit against a state actor under Section 1983. It does not concern a criminal prosecution under 18 U.S.C. 241 or 242 for willfully violating constitutional rights or conspiring to do so, or a federal civil-rights enforcement action under 34 U.S.C. 12601 for a pattern or practice of violating constitutional rights. The limits contained in those statutes differ from the limits in Section 1983. See U.S. Amicus Br. at 13-14, *Gonzalez* v. *Trevino*, No. 22-1025 (oral argument scheduled for Mar. 20, 2024).

Nor does this case concern a suit against a federal officer under *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). This Court has not previously extended *Bivens* to the context of Fourth Amendment malicious-prosecution claims.

Nor, finally, does this case concern the scope of the exclusionary rule in a criminal case. A violation of the Fourth Amendment does not automatically trigger the remedy of suppression. See *Herring* v. *United States*, 555 U.S. 135, 140 (2009).

A. The Court Of Appeals Erred In Holding That A Single Valid Charge Automatically Defeats A Fourth Amendment Malicious-Prosecution Claim

In the decision below, the court of appeals held that probable cause for a single charge automatically defeats a Fourth Amendment malicious-prosecution claim predicated on a separate charge for which probable cause was absent. That categorical rule is inconsistent with the text of Section 1983 and the Fourth Amendment, conflicts with background principles of tort law, and is unnecessary to protect police officers from unfounded suits.

1. Section 1983 provides redress when a police officer's initiation of a baseless criminal charge causes an unreasonable seizure

The interpretation of a statute begins with its text. The statute at issue here, Section 1983, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, *subjects or causes to be subjected*, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. 1983 (emphasis added). Section 1983 thus imposes civil liability upon a state actor only if he either (1) "subjects" someone to the denial of a federal right or (2) "causes" someone "to be subjected" to such a denial. *Ibid.*; see *Rizzo* v. *Goode*, 423 U.S. 362, 370-371 (1976).

Filing a baseless criminal charge does not, by itself, "subject" anyone to the denial of Fourth Amendment

rights. The Fourth Amendment forbids "unreasonable searches and seizures," not unreasonable initiation of criminal charges. To be sure, the Amendment's Warrant Clause requires probable cause for the issuance of a warrant, see U.S. Const. Amend. IV, and its Reasonableness Clause requires probable cause for certain searches and seizures, see *Bailey* v. *United States*, 568 U.S. 186, 192-193 (2013). But nothing in the Amendment requires probable cause—or any other level of suspicion—for the initiation of a criminal charge. See *Gerstein* v. *Pugh*, 420 U.S. 103, 118-119, 125 n.26 (1975). Nor does the Amendment entitle the accused "to judicial oversight or review of the decision to prosecute." *Id.* at 119.

Filing a baseless criminal charge can, however, *cause* a person to suffer a violation of the Fourth Amendment. Most importantly, an unjustified charge can lead to unjustified arrest and unjustified detention pending trial. If a police officer's initiation of a baseless criminal charge causes such a violation, Section 1983 makes the officer liable for damages. See *Thompson*, 596 U.S. at 42.

That reading of Section 1983 fits with its common-law background. At common law, a person who filed a wrongful criminal complaint, thereby causing wrongful arrest and detention, could be held liable for that injury through a tort claim for malicious prosecution. See *Malley* v. *Briggs*, 475 U.S. 335, 340-341 (1986). Because "the common law recognized the causal link between the submission of a complaint and an ensuing arrest," this Court has "read § 1983 as recognizing the same causal link." *Id.* at 345 n.7. This Court has referred to a claim based on that theory as a "Fourth Amendment claim under § 1983 for malicious prosecution." *Thompson*,

596 U.S. at 39. The "malicious prosecution" label should not, however, obscure the fact that the Fourth Amendment prohibits only the unreasonable seizure, not the prosecution.

This Court's decision in *Thompson* confirms that understanding. The Court noted that a Fourth Amendment malicious-prosecution claim is also known as "a claim for unreasonable seizure pursuant to legal process"—indicating that the claim requires proof of an unreasonable seizure. *Thompson*, 596 U.S. at 42. The Court added that, "[b]ecause this claim is housed in the Fourth Amendment, the plaintiff also has to prove that the malicious prosecution resulted in a seizure of the plaintiff." *Id.* at 43 n.2. And the Court quoted an opinion stating that "[n]early every [court of appeals] has held that malicious prosecution is actionable under the Fourth Amendment *to the extent that the defendant's actions cause the plaintiff to be 'seized' without probable cause*." *Id.* at 42 (quoting *Pitt* v. *District of Columbia*, 491 F.3d 494, 510-511 (D.C. Cir. 2007)) (emphasis added).

That understanding of the legal basis of Fourth Amendment malicious-prosecution claims helps resolve the question presented. A person who faced both valid and baseless criminal charges may bring such a claim, so long as the baseless charge "cause[d]" him "to be subjected" to an unreasonable seizure. 42 U.S.C. 1983. Contrary to the court of appeals' any-crime rule, the police officer does not automatically win whenever probable cause supports any one charge. A baseless charge can cause an unreasonable seizure—such as a prolongation of pretrial detention—even if the police have probable cause to support some other, valid charge. See pp. 14-18, *infra*. At the same time, contrary to the every-

crime rule applied by some other courts, the police officer does not automatically lose whenever one of the charges was groundless. That rule would improperly relieve the plaintiff of the burden of proving that the baseless charge caused a violation of the Fourth Amendment.

2. A baseless charge can cause an unreasonable seizure even if accompanied by a valid charge

A plaintiff bringing a Fourth Amendment malicious-prosecution case typically alleges—as petitioners did here—that a police officer's wrongful initiation of a criminal charge resulted in an unreasonable arrest and then in unreasonable pretrial detention. See J.A. 61. The existence of even a single valid charge usually establishes that an arrest was reasonable. An arrest complies with the Fourth Amendment if the police have probable cause to believe that the suspect committed a crime. See *United States* v. *Watson*, 423 U.S. 411, 414-424 (1976). Probable cause for any one charge suffices; "it is not relevant whether probable cause exist[s] with respect to each individual charge." *Jaegly* v. *Couch*, 439 F.3d 149, 154 (2d Cir. 2006) (Sotomayor, J.). The Fourth Amendment, after all, focuses "on the validity of the *arrest*, and not on the validity of each charge." *Ibid.*

Before the decision below, the Sixth Circuit had already reasoned that "[t]he same rules apply" to pretrial detention. *Howse* v. *Hodous*, 953 F.3d 402, 409 (2020), cert. denied, 141 S. Ct. 1515 (2021). But that leap is unwarranted. The Fourth Amendment standards for pretrial detention differ in some respects from those for arrest. As a result of those differences, a baseless criminal charge can, in some cases, result in unreasonable pretrial detention despite the existence of probable cause with respect to some other crime.

a. To begin, extended pretrial detention—that is, detention that lasts more than 48 hours after arrest—ordinarily complies with the Fourth Amendment only if supported by a valid finding of probable cause on at least one charge pending against the suspect. See *County of Riverside* v. *McLaughlin*, 500 U.S. 44, 56 (1991); *Manuel*, 580 U.S. at 364-368. If no such finding exists, a police officer may not defend the constitutionality of extended pretrial detention by invoking the existence of probable cause for uncharged crimes.

That result follows from the difference between the Fourth Amendment requirements for arrest and those for extended pretrial detention. A police officer generally may arrest a suspect without a warrant based on his own judgment of probable cause. See *Watson*, 423 U.S. at 416-417. A reviewing court must focus on the arrest's objective reasonableness, not the arresting officer's motives or reasoning. See *Devenpeck* v. *Alford*, 543 U.S. 146, 153 (2004). It follows that the objective existence of probable cause with respect to a crime—any crime—justifies an arrest, regardless of whether the arresting officer relied on or cited that particular offense when making the arrest. See *id.* at 153-156.

Extended pretrial detention, in contrast, generally requires more than the existence of probable cause. It requires a "fair and reliable determination" of probable cause, by a neutral magistrate or grand jury, either before or promptly after arrest. *Gerstein*, 420 U.S. at 125. That requirement can be satisfied by a magistrate's finding in the course of issuing an arrest warrant, see *id.* at 112-113; a magistrate's finding in a hearing after a warrantless arrest, see *id.* at 114; or a grand jury's indictment before or after arrest, see *id.* at 117 n.19. But if the finding is invalid—for example, because it was

tainted by fabricated evidence, see *Manuel*, 580 U.S. at 369 n.8—the police officer cannot refute the constitutional claim by asserting probable cause for some other offense never charged by the prosecutor and never considered by the magistrate or grand jury. Allowing that substitution would erase the requirement that probable cause not only exist, but also be properly found, before extended pretrial detention.

Those principles explain why the Eleventh Circuit reached the right result on the facts of *Williams* v. *Aguirre*, 965 F.3d 1147 (2020), one of the cases in the circuit conflict that petitioners ask this Court to resolve. See Pet. 13. According to the plaintiff in *Williams*, police officers falsified charges of attempted murder, used fabricated evidence to obtain an arrest warrant on those charges, and caused him to spend more than 16 months in jail while awaiting trial on those charges. See 965 F.3d at 1153-1156. The police officers had probable cause to believe that the plaintiff had engaged in a different, uncharged crime—carrying a concealed firearm—but that was no defense to the plaintiff's Fourth Amendment claim. See *id.* at 1152. Because no magistrate or grand jury had ever made a valid finding of probable cause as to the uncharged crime, the alleged existence of probable cause as to that crime could not have authorized the plaintiff's 16-month confinement.

b. If a magistrate or grand jury has made a valid finding of probable cause on at least one charge, the Fourth Amendment permits the suspect's continued detention pending trial on that charge. But even in that situation, the suspect can establish an unreasonable seizure by showing, for example, that a fabricated charge prolonged his pretrial detention—or, *a fortiori*, by

showing that it caused pretrial detention that would not otherwise have occurred.

The Fourth Amendment's reasonableness command governs not only the initiation of a seizure, but also its duration. See *Rodriguez* v. *United States*, 575 U.S. 348, 354-357 (2015). For example, the Fourth Amendment limits the length of time for which the police may detain an individual who was arrested without a warrant and who has not yet received a judicial determination of probable cause. See *Gerstein*, 420 U.S. at 125. As a general rule, such judicially unreviewed detention may last only 48 hours. See *County of Riverside*, 500 U.S. at 56. And even within that 48-hour period, the government may not unreasonably delay a probable-cause hearing. See *ibid.* "Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." *Ibid.*

The Fourth Amendment's protections—including its guarantee against unreasonably prolonged detention—continue to apply even after a magistrate has found probable cause. See *Manuel*, 580 U.S. at 369 n.8. Pretrial detention may not outlast the purpose that justified it—which means, in this context, that it may not last longer than required by the *valid* criminal charges. If a police officer's fabrication of a charge adds time to the suspect's stay in jail, the suspect's seizure for that extra time is unreasonable.

To use a simple example, suppose a police officer initiates a valid drug charge and a fabricated gun charge, and the prosecutor later drops the drug charge, but the suspect remains in jail awaiting trial on the gun charge. In that example, continued pretrial detention after the

dismissal of the only valid charge would plainly violate the Fourth Amendment. See *Howse*, 953 F.3d at 410 n.3 (acknowledging that a baseless charge that "change[s] the length of detention" would present "a different issue"); Br. in Opp. 10 (conceding a Fourth Amendment violation where the baseless charge "lengthened [the] duration" of detention).

c. A baseless charge accompanied by a valid charge can cause an unreasonable seizure in yet other ways. For instance, the Fourth Amendment prohibits the use of excessive force in effecting an arrest. See *Graham* v. *Connor*, 490 U.S. 386, 394-395 (1989). The degree of force permitted depends on, among other things, "the severity of the crime at issue." *Id.* at 396. If a police officer's initiation of a baseless charge causes a more forceful arrest than the valid charge alone would have justified, the victim could sue the officer for causing an unreasonable seizure.

Resolving this case does not require this Court to catalogue all the circumstances in which a baseless charge can cause an unreasonable seizure even though accompanied by a valid charge. It suffices to recognize that, contrary to the categorical rule applied in the decision below, some such cases exist—and that when they arise, Section 1983 allows the injured party to seek redress.

3. A categorical any-crime rule conflicts with background principles of tort law

a. Congress enacted Section 1983 against the backdrop of the common law of torts. See *Carey* v. *Piphus*, 435 U.S. 247, 257-258 (1978). In defining the elements of a Section 1983 damages claim, therefore, a court should consider "the elements of the most analogous tort as of 1871 when § 1983 was enacted," to the extent

those elements comport with "'the values and purposes of the constitutional right at issue.'" *Thompson*, 596 U.S. at 43 (citation omitted).[2]

Tort law does not, of course, determine the meaning of the underlying constitutional right. The meaning of the Fourth Amendment, for example, depends on its text, its purposes, and the common law in 1791. See *Gerstein*, 420 U.S. at 114-116. It does not depend on the elements of the most analogous tort in 1871.

Tort law does, however, help determine the elements of a damages claim under Section 1983, which sometimes require the plaintiff to establish more than the underlying constitutional violation. For example, this Court has relied on the elements of an analogous tort in recognizing the favorable-termination element of a Fourth Amendment malicious-prosecution claim, see *Thompson*, 596 U.S. at 44, and the no-probable-cause element of a First Amendment retaliatory-arrest claim, see *Nieves* v. *Bartlett*, 139 S. Ct. 1715, 1726-1727 (2019).

b. The most analogous tort to the Fourth Amendment claim here is malicious prosecution. See *Thompson*, 596 U.S. at 43. A claim for that tort traditionally required proof that a person initiated a charge without probable cause. See *Wheeler* v. *Nesbitt*, 24 How. 544, 549-550 (1861). That element helped avoid the risk that tort claims would deter well-founded prosecutions. See *Dinsman* v. *Wilkes*, 12 How. 390, 402 (1852).

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[2] Section 1983 was first enacted as part of the Civil Rights Act of 1871. See § 1, ch. 22, 17 Stat. 13. But it was re-enacted in substantially its current form when Congress adopted the Revised Statutes as positive law in 1874. See Rev. Stat. § 1979; *United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 449 n.4 (1993).

If a person lacked probable cause for initiating one criminal charge, however, he could not defend himself from a malicious-prosecution claim by showing that probable cause supported a different charge. English courts in the early 19th century held that a malicious-prosecution claim could proceed on the basis of "an indictment containing several charges, whereof for some there is, and for others there is not probable cause." *Reed* v. *Taylor*, 128 Eng. Rep. 472, 473 (C.P. 1812) (opinion of Mansfield, C.J.); see *ibid.* (opinion of Gibbs, J.); see also *Ellis* v. *Abrahams*, 115 Eng. Rep. 1039, 1041 (Q.B. 1846); *Delisser* v. *Towne*, 113 Eng. Rep. 1159, 1163 (Q.B. 1841).

American courts followed the English precedents. Several state supreme courts held that a person could not "protect himself from the consequences of prosecuting a malicious action, by commencing at the same time an action founded on a valid demand." *Pierce* v. *Thompson*, 23 Mass. 193, 197 (1828); see *Boogher* v. *Bryant*, 86 Mo. 42, 49-50 (1885); *Barron* v. *Mason*, 31 Vt. 189, 198 (1858). Relatedly, several state supreme courts held that probable cause for an uncharged crime did not compensate for a lack of probable cause for the crime actually charged. See *Sutton* v. *McConnell*, 50 N.W. 414, 414-415 (Wis. 1879); *Hill* v. *Palm*, 38 Mo. 13, 20 (1866); *Gregory* v. *Thomas*, 5 Ky. 286, 286 (1811).

Those principles were settled by the time of Section 1983's enactment. As one commentator wrote, "[i]t is not necessary that the whole proceeding be utterly groundless; for if groundless charges are maliciously and without probable cause coupled with others, which are well founded, they are not on that account the less injurious." 2 Simon Greenleaf, *A Treatise on the Law of Evidence*, § 449, at 400 (rev. by Isaac F. Redfield,

10th ed. 1868); see 2 C. G. Addison, *A Treatise on the Law of Torts* § 860, at 77 (Am. ed. 1878); 1 Francis Hilliard, *The Law of Torts or Private Wrongs* § 1, at 435 n.(b) (4th ed. 1874).

In sum, the probable-cause element of the malicious-prosecution tort was assessed charge by charge under the common law. This Court should follow a similar charge-specific approach in evaluating Fourth Amendment malicious-prosecution claims.

Yet that does not mean that a plaintiff who proves the absence of probable cause on a single charge will always prevail. A tort plaintiff would still need to prove the other elements of the tort, such as malice and favorable termination. See *Wheeler*, 24 How. at 549-550. In the same way, a Section 1983 plaintiff would still need to prove the other elements of the Fourth Amendment claim, such as favorable termination and causation of an unreasonable seizure. See *Thompson*, 596 U.S. at 43 n.2, 44. But when a plaintiff can prove those other elements, nothing in Section 1983's tort-law background supports denying relief.

4. Concerns about unwarranted Section 1983 suits do not justify a categorical any-crime rule

A categorical any-crime rule is not necessary to protect police officers from unwarranted Section 1983 claims. Other elements adequately limit the scope of Fourth Amendment malicious-prosecution claims.

First, a plaintiff may bring such a claim only if the police officer lacks probable cause to initiate the charge at issue. See *Thompson*, 596 U.S. at 43. Probable cause "means less than evidence which would justify condemnation." *Illinois* v. *Gates*, 462 U.S. 213, 235 (1983) (citation omitted). It requires "only the probability, and not a prima facia showing, of criminal activity." *Ibid.*

(citation omitted). The probable-cause element, even when assessed charge by charge, should thus provide significant protection for a police officer who initiates a criminal charge that turns out to be mistaken. See *Thompson*, 596 U.S. at 49.

Second, although this Court has not resolved the issue, the United States has argued that the plaintiff must prove that the police officer acted with intent to deceive or reckless disregard for the absence of probable cause. See U.S. Amicus Br. at 25-26, *Manuel*, *supra* (No. 14-9496). Without such proof, the plaintiff cannot overcome the presumption of regularity afforded to the magistrate's or grand jury's neutral determination of probable cause in the original criminal case. See *ibid.*

Finally, Fourth Amendment malicious-prosecution claims are subject to applicable immunities. Absolute immunity precludes such claims against prosecutors, see *Imbler* v. *Pachtman*, 424 U.S. 409, 420-428 (1976), and qualified immunity limits such claims against police officers, see *Thompson*, 596 U.S. at 49.

5. The court of appeals' judgment should be vacated

In this case, the court of appeals held that probable cause supported the stolen-property and unlicensed-dealing charges against Chiaverini. See Pet. App. 11a-16a. The court then stated: "Because probable cause existed to arrest and prosecute Chiaverini on at least one charge, his malicious-prosecution and false-arrest claims fail." *Id.* at 16a. For the reasons discussed above, that analysis was wrong. The allegedly fabricated money-laundering charge would support a Fourth Amendment malicious-prosecution claim, notwithstanding the presence of the valid charges, if it caused an unreasonable seizure.

Petitioners contend (Br. 40) that the money-laundering charge did cause an unreasonable seizure. Specifically, they contend (*ibid.*) that the alleged fabrication of that charge caused Chiaverini to suffer almost four days of detention that he would not otherwise have suffered. This Court should vacate the court of appeals' judgment and remand the case to give the court the opportunity to consider that contention in the first instance.

At the certiorari stage, respondents argued (Br. in Opp. 11-14) that, contrary to appearances, the court of appeals did not actually apply a categorical "any-crime" rule. As petitioners observe (Br. 39-40; Cert. Reply Br. 2-5), that description conflicts with the language of the decision below, with respondents' own arguments below, and with district courts' understanding of Sixth Circuit precedent. Because it is at best unclear whether the court of appeals applied the correct legal rule, vacatur and remand are appropriate. See *Perry* v. *Perez*, 565 U.S. 388, 399 (2012) (per curiam).

B. This Court Should Not Adopt Some Of Petitioners' Broader Contentions

Petitioners and the United States share common ground on much of this case. In particular, petitioners and the United States agree that courts should evaluate the probable-cause element of a Fourth Amendment malicious-prosecution claim charge by charge rather than *en bloc*. The United States does not, however, agree with some of petitioners' broader arguments.

1. Petitioners' contentions concerning the Warrant Clause and the seizure of their effects are not properly before this Court

Petitioners argue that a plaintiff may bring a Fourth Amendment malicious-prosecution claim when a police

officer's initiation of a baseless charge causes "a harm 'housed in the Fourth Amendment.'" Pet. Br. 17 (quoting *Thompson*, 596 U.S. at 43 n.2). Petitioners appear (Br. 11) to understand that phrase to encompass not only claims for unreasonable seizures of a person, but also claims for violations of the Fourth Amendment's Warrant Clause and for unreasonable seizures of effects. But petitioners' contentions concerning warrants and seizures of effects are not properly before this Court.

The question presented concerns the elements of a "Fourth Amendment malicious prosecution claim." Pet. i. The "'specific constitutional right' at issue" in such a claim is the "right of the people to be secure *in their persons* against unreasonable seizures." *Manuel*, 580 U.S. at 364, 370 (emphasis added; citation and ellipses omitted). This Court has explained that a plaintiff who brings such a claim "has to prove that the malicious prosecution resulted in a seizure *of the plaintiff*." *Thompson*, 596 U.S. at 43 n.2 (emphasis added).

Amalgamating claims involving seizures of persons, tainted warrants, and seizures of effects into a single omnibus tort risks causing significant confusion. The elements of a Section 1983 claim depend on "pinpointing" the precise constitutional provision that the defendant is charged with violating. *Manuel*, 580 U.S. at 370. But the Warrant Clause and the Reasonableness Clause are different provisions. One governs a neutral magistrate's act of issuing the warrant; the other governs a police officer's act of conducting a search or seizure. Combining both provisions into one constitutional tort risks blurring their distinct texts and distinct requirements.

Similarly, seizures of effects differ in some respects from seizures of persons. Detention of a person ordi-

narily requires "probable cause to believe the suspect has *committed* a crime." *Gerstein*, 420 U.S. at 120 (emphasis added). A seizure of property, in contrast, ordinarily requires probable cause to believe that the property is "contraband or *evidence* of a crime." *United States* v. *Place*, 462 U.S. 696, 701 (1983) (emphasis added). In some circumstances, a police officer could have probable cause for a search and seizure of effects, but not for detention of the person. See 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 3.1(b), at 13 (6th ed. 2020). Combining a claim for an unreasonable seizure of the person with one for unreasonable seizure of effects risks erasing such distinctions.

Relatedly, in determining the elements of a Section 1983 claim for a constitutional violation, a court should consider "the elements of the most analogous tort." *Thompson*, 596 U.S. at 43. It is far from obvious that the most analogous tort for a claim involving the seizure of effects is a form of malicious prosecution, as opposed to, say, trespass. Nor is it obvious that malicious prosecution's favorable-termination element would apply to a property-seizure claim. See *Haring* v. *Prosise*, 462 U.S. 306, 317-323 (1983) (permitting a Section 1983 claim for unreasonable seizure of effects despite the plaintiff's guilty plea and conviction).

This Court should therefore limit its decision to the right against unreasonable seizures of the person, and should not consider petitioners' arguments concerning the Warrant Clause and the seizure of their effects. It should instead leave those contentions, to the extent that petitioners have preserved them, for remand.

2. Petitioners err in contending that an arrest warrant violates the Warrant Clause whenever the warrant affidavit contains a falsified charge

Petitioners contend (Pet. Br. 28-30, 36-37) that an arrest warrant violates the Warrant Clause whenever the warrant affidavit includes a falsified charge. For the reasons discussed above, that contention is not properly before this Court. See pp. 23-25, *supra*. The contention in any event lacks merit.

a. The Warrant Clause provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. In *Franks* v. *Delaware*, 438 U.S. 154 (1978), this Court read the Clause to require "a *truthful* showing" of probable cause. *Id.* at 164-165 (citation omitted). "This does not mean 'truthful' in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants." *Id.* at 165. It does, however, mean that the probable-cause showing may not rest on "a deliberately or recklessly false statement." *Ibid.*

A falsehood in the affidavit invalidates a warrant only if the statement was "necessary to the finding of probable cause." *Franks*, 438 U.S. at 156. Thus, if a criminal defendant files a suppression motion challenging the affidavit's veracity, the court should "set to one side" the "material that is the subject of the alleged falsity." *Id.* at 171-172. If "there remains sufficient content in the warrant affidavit to support a finding of probable cause," the challenge to the warrant fails. *Id.* at 172; see 2 LaFave § 4.4(c), at 684 ("[W]hen the *Franks* defect is inclusion in the affidavit of recklessly

or knowingly false information, that information must be deleted and the affidavit judged on the basis of the remaining information.").

Under *Franks*, the alleged falsehoods in this case do not invalidate Chiaverini's arrest warrant. An arrest warrant requires "probable cause to believe the suspect has committed a crime." *Gerstein*, 420 U.S. at 120. The warrant here rested on a finding of probable cause that Chiaverini had committed three crimes: retaining stolen property, acting as a precious-metals dealer without a license, and money laundering. See D. Ct. Doc. 27-8. Petitioners contend (Br. 7) that falsehoods in the warrant affidavit undermined the probable-cause finding on the money-laundering charge. But even if those alleged falsehoods were "set to one side," there would still be "sufficient content in the warrant affidavit" to support the findings of probable cause on the other charges—and, thus, constitutionally sufficient content to support the arrest warrant. *Franks*, 438 U.S. at 172; see Pet. App. 11a-16a.

b. Petitioners' contrary arguments are incorrect. Petitioners argue (Br. 30-31) that the inclusion of a falsified charge in a warrant affidavit violates the Warrant Clause's particularity requirement: "no Warrants shall issue, but * * * particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. But that requirement concerns the content of the *warrant*, not the content of the *affidavit*. See *Groh* v. *Ramirez*, 540 U.S. 551, 560-561 (2004). And it requires a particular description only of "the place to be searched" and "the persons or things to be seized," U.S. Const. Amend. IV—not of the crimes with which the person is charged. This Court has previously rejected efforts to require particularity about additional

points not specified in the Warrant Clause's text. See *United States* v. *Grubbs*, 547 U.S. 90, 97-98 (2006) (conditions precedent to the warrant's execution); *Dalia* v. *United States*, 441 U.S. 238, 257 (1979) (specification of the manner of the warrant's execution).

Petitioners also argue (Br. 29) that a falsehood in a warrant application could "slander the victim" even when it has no effect on the warrant's authorization of a search or seizure. But the Fourth Amendment exists to protect "persons, houses, papers, and effects" from "unreasonable searches and seizures," U.S. Const. Amend. IV—not to protect names from slander. A falsehood in a warrant affidavit, no matter how defamatory, does not violate anyone's Fourth Amendment rights if the affidavit's remaining content suffices to authorize the search or seizure at issue. See *Franks*, 438 U.S. at 172. Victims of defamation may look to state tort law, not the Constitution, for redress. Cf. *Paul* v. *Davis*, 424 U.S. 693, 710-712 (1976).

Finally, petitioners argue (Br. 34) that, at the Founding, an arrest warrant's validity "depended on the precise charges against the arrestee." Specifically, they argue (*ibid.*) that the common law distinguished between arrests for "treason, felony, and breach of the peace" and other types of arrests. But as this Court has previously recognized, the phrase "treason, felony, and breach of the peace" covers all crimes. See *Gravel* v. *United States*, 408 U.S. 606, 614 (1972). The common law used the phrase only to exclude arrests in civil cases, which were common at the Founding but are now obsolete. See *ibid.* Petitioners' evidence thus shows, at most, that the common law distinguished between criminal arrest warrants and civil arrest warrants—not that

it distinguished among criminal arrest warrants based on the precise charges at issue.

3. Petitioners err to the extent they suggest that the need to show causation of a seizure pertains only to damages

In one of the principal cases on which petitioners rely, the Eleventh Circuit has reasoned that a causal link between a baseless charge and an unreasonable seizure is relevant only to compensatory damages and is not an element of the plaintiff's claim. See *Williams*, 965 F.3d at 1161-1162. On that view, a plaintiff who faced a baseless charge could sue under Section 1983 and recover nominal damages, punitive damages, and attorney's fees, but not actual damages, even if the baseless charge had no causal connection to a seizure of the plaintiff. See *ibid.* Petitioners defended that view in their petition for a writ of certiorari (at 25) and appear to defend it in their brief (at 40 n.14).

That argument is incorrect. The Fourth Amendment prohibits unreasonable seizures, not unreasonable criminal charges. See p. 12, *supra*. A charge that lacks a causal connection to a seizure thus cannot support a Fourth Amendment malicious-prosecution claim. Indeed, this Court has recognized that, "[b]ecause this claim is housed in the Fourth Amendment, the plaintiff also has to prove that the malicious prosecution resulted in a seizure of the plaintiff." *Thompson*, 596 U.S. at 43 n.2.

The Eleventh Circuit's view also conflicts with Section 1983's text. Section 1983 expressly requires proof that the defendant "cause[d]" the plaintiff "to be subjected" to the denial of a federal right. 42 U.S.C. 1983. That text makes causation an element of the claim, not simply a fact that affects the calculation of damages.

Although the Fourth Amendment would not support relief in the absence of an unreasonable seizure, other sources of law might do so. This Court has left open the question whether the Due Process Clause would support a "malicious prosecution claim" against a police officer who initiated baseless criminal charges. *Thompson*, 596 U.S. at 43 n.2. "If so, the plaintiff presumably would not have to prove that he was seized as a result of the malicious prosecution." *Ibid.* Relatedly, the Court has left open the question whether the Due Process Clause supports a "fabricated-evidence claim" in a case where the fabrication of evidence resulted in a deprivation of liberty. *McDonough* v. *Smith*, 139 S. Ct. 2149, 2155 (2019). Finally, victims of false accusations could seek relief under state law—including through a traditional tort claim for malicious prosecution. See *Cordova* v. *City of Albuquerque*, 816 F.3d 645, 662 (10th Cir. 2016) (Gorsuch, J., concurring in the judgment).

CONCLUSION

This Court should vacate the judgment of the court of appeals and remand the case for further proceedings.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. U.S. Const. Amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. 42 U.S.C. 1983 provides:

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.